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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,167	08/20/2003	Scott McCuan		7619

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EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT PAPER NUMBER

3671

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,167

Applicant(s)

MCCUAN ET AL. *gt*

Examiner

Alexandra K Pechhold

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15 is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7 and 10 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 8, 9, 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 1, line 3 is objected to because of the following informalities: it appears that "is" should be inserted before "disposed". Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-3, 6, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman (US 5,143,478).**

Regarding claim 1, Bowman discloses a device to inhibit entry of debris and other matter into a conduit comprising:

- an outer band, seen as keeper ring (18), an inner band, seen as base ring (11), wherein said inner band disposed interior to said outer band as Figs. 1 and 2 show, and a cover, disclosed in column 5, lines 19-21 and 30-32, wherein a perimeter edge of said cover is between said outer band and said inner band;
- said outer band having two separated ends, shown in Fig. 1 with the gap (27) therebetween, and said inner band having two separated ends seen as ends (12) and (13) in Fig. 1; and

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- an expansion clamp attached to one of said inner band and said outer band, seen as wrench grip (16) in Fig. 1.

Bowman fails to disclose that the cover is fastened, instead just merely noting its placement in column 5, lines 19-21 and 30-32, which is between the outer ring (18) and inner ring (11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Bowman to be fastened in its location, since it is well known in the art of manholes to secure covers by some fastening means to prevent their unintentional displacement or removal.

Regarding claim 2, a portion of said outer band having a portion of said outer band overlapping adjacent said two separated ends, seen as cover (28) in Fig. 1 which is part of the outer band that overlaps the separated ends, and said expansion clamp is attached to said inner band, shown in Fig. 1.

Regarding claim 3, Fig. 1 of Bowman illustrates a plurality of screws at (14) and (14').

Regarding claim 6, a plurality of anchor bolts threadably engaged with said inner band is shown in Fig. 1, and said anchor bolts are movable through said inner band and said outer band since they constrict or expand the size of base ring (11) which in turn constricts or expands the size of the keeper ring (18).

Regarding claim 10, Bowman fails to disclose the inner band as being narrower than the outer band. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the thickness of ring (11) and ring (18) so

that ring (11) is narrower, since such a dimensional modification does not affect the structure and function of the adjustable manhole cover support of Bowman.

4. **Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman (US 5,143,478) as applied to claim 1 above, and further in view of Sauriol et al (US 3,920,347).** Bowman fails to disclose a handle, but Sauriol teaches a handle rings (60) on a cover. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Shenk to include a handle as taught by Sauriol, since Sauriol's handle facilitates removal of the cover which provides greater accessibility.

Response to Arguments

5. Applicant's arguments filed 9/10/04, with respect to the rejection of claim 1 under Shenk et al (US 2,145,613) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, and considering the amendments to the claims a new ground of rejection is made in view of Bowman (US 5,143,478).

Allowable Subject Matter

6. Claims 11-15 are allowed.

7. Claims 4, 5, 8, 9, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. Applicant's amendment necessitated the new ground of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600